



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 315-99

30 July 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting, in effect, that the reason for his discharge be changed so that he can receive full separation pay, and that his reenlistment bonus not be recouped.

2. The Board, consisting of Mr. Leeman, Mr. Mazza and Ms. Brown, reviewed Petitioner's allegations of error and injustice on 27 July 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 8 November 1995 for five years. At that time he was paid a Selective Reenlistment Bonus of \$20,122.20. The authorizing message states that he should be paid an initial payment of \$10,061.10 and annual installments of \$2,515.27.

d. Petitioner then began having problems keeping his weight within standards and failed several physical readiness tests. On 30 March 1998 he declined the opportunity to attend an inpatient, Level III weight management program. At that time, he

acknowledged that if he did not attend Level III he would be processed for an administrative separation.

e. On 4 May 1998, Petitioner was notified of separation processing because he had failed the physical readiness standards three consecutive times. In connection with this processing he elected to waive his right to have his case heard by an administrative discharge board. In his letter directing discharge the commanding officer stated as follows:

... is unable to meet the criteria for maintained physical readiness standards because of a history of weight gain and his refusal to participate in Level III Weight Management Program. ...

Petitioner was honorably discharged due to weight control failure on 29 May 1998. At the time of his discharge he had completed 8 years, 6 months and 24 days of active service. The record shows that he was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

f. Petitioner contends that he was improperly separated due to weight control failure because he did not have three failures within a four year period. He points out that he did fail a PRT in early April 1994, but the next two failure were in October 1997 and 30 April/1 May 1998. Additionally, he requests that he be paid full separation pay vice the one half separation pay he actually received and that the unearned portion of his SRB not be recouped.

g. Attached to enclosure (2) is an advisory opinion from the Navy Personnel Command (NPC) which states, in part, as follows:

... I concur with (Petitioner) that he was improperly discharged for Weight Control Failure. To be separated for this reason there has to be supporting documentation. The administrative discharge package must include at least two Page 13's (one documenting the first or second failure and the other documenting the third failure) and three recorded failure in the PRT folder within four years prior to discharge. ... he only had one Page 13 properly executed on 31 October 1997 and only one body fat failure record in his PRT folder within the mandatory time frame. ... Therefore (he) shouldn't have been separated for Weight Control Failure.

The advisory opinion notes that individuals separated due to physical readiness failures normally receive only one half separation pay unless a waiver is granted. The advisory opinion also states that insufficient documentation existed to confirm that the reenlistment code was properly assigned.

h. Also attached to enclosure (2) is Petitioner's response to the advisory opinion, in which he provided documentation showing that he received the Navy and Marine Corps Achievement Medal and a copy of his last performance evaluation. The evaluation shows that he was not recommended for reenlistment solely because of his weight control failure.

i. The Board is aware that when an individual has been improperly discharged, corrective action is required, either reinstatement on active duty and discharge at the expiration of enlistment or an earlier discharge if warranted by the facts of the case. The Board is also aware that when a reason for discharge is improper and no other reason is appropriate, the reason for discharge is changed to Best Interest of the Service (BIOTS) or Secretarial Authority. The governing directive does not authorize half separation pay instead of full separation pay for individuals separated due to BIOTS.

j. Regulations allow for the assignment of an RE-3T or an RE-4 reenlistment code when an individual is discharged due to weight control failure. When BIOTS or Secretarial authority is the reason for discharge, an RE-3T code is not authorized by regulations.

k. The Board is aware that the law requires recoupment of any unearned portion of an SRB in most cases, which includes discharge by reason of weight control failure. The Board notes that Petitioner served 2 years, 6 months and 21 days, about half of the five year enlistment. Therefore, he only earned half of the bonus. In his response to the advisory opinion, Petitioner states that he was indebted on discharge in the amount of \$26,000. It is unclear how this amount was computed, however, there may be other indebtedness not set forth in the application. He states that the Navy withheld his separation pay, last pay check and lump sum leave payment to recoup the debt.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner did not have three weight control failures in a four year period and agrees with the conclusion in the advisory opinion that he was improperly discharged for that reason. Therefore, the Board concludes that

the discharge must be set aside. However, the Board notes that he did not accept the offer of the level III program, and did not contest the administrative discharge processing and apparently wanted to be discharged. In addition it appears from his application that he only wants a record correction and does not desire reinstatement in the Navy. Accordingly, the Board concludes that the record should be corrected to show that he was not discharged on 29 May 1998 but continued to serve on active duty until the date the Board's recommendation is approved on 30 July 1999. He should be honorably discharged on that date by reason of BIOTS or Secretarial Authority. This extra service will reduce the amount of the SRB that must be recouped.

Since the record will no longer show that Petitioner was discharged due to weight control failure, there is no basis to support the payment of one half separation pay. Therefore, the Board further concludes that full separation pay is warranted.

Since the only reason for the assignment of the RE-4 reenlistment code was Petitioner's weight control failure and his performance was otherwise satisfactory, the Board further concludes that the less restrictive RE-3T reenlistment code is more appropriate. In reaching its decision, the Board notes that an RE-3T reenlistment is not authorized when an individual is discharged because of Secretarial Authority but believes it should be assigned in this case as an exception to policy.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was not discharged on 29 May 1998 but continued to serve on active duty until he was honorably discharged by reason of Secretarial Authority on 30 July 1999, the date of approval of the Board's recommendation, with an RE-3T reenlistment code.
- b. That Petitioners' naval record be further corrected to show that at the time of his discharge he was paid full separation pay vice the half separation pay now of record.
- c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

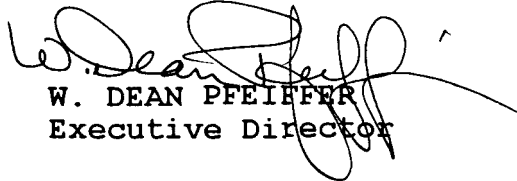
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director